WA 211/2002
BEFORE
HON'BLE MR JUSTICE D.BISWAS, CHIEF JUSTICE(ACTING)
HON'BLE JUSTICE MR. JUSTICE B.D.AGARWAL

Agarwal,J

1. The appellant who was the writ petitioner in C.R. No.784 of 1996 is assailing the judgment and order dated 20.9.2001 passed by the learned Single Judge of this Court. By this impugned judgment the learned Single Judge has affirmed the memorandum/order dated 30.01.1995 issued by the General Manager (Tech), Oil and Natural Gas Commission ( for short 'ONGC') whereby the writ petitioner was treated to have resigned from the job with effect from 20.9.1993 under Regulation 14(5) of the Oil and Natural Gas Commission Leave Regulations, 1968.

2. We have heard Shri G.N. Sahewalla, learned Sr. Counsel appearing on behalf of the appellant/writ petitioner. The respondents were represented by Shri P. K. Roy, Standing Counsel, ONGC, Shri S.K.Chakraborty, CGSC and Mrs. B.Goyal, learned State counsel, Assam.

3. Facts in narrow compass are that the appellant/writ petitioner was appointed as Assistant Engineer(Elect.) in the year 1982. Subsequently, his appointment was regularized and appellant was also promoted to the rank of Executive Engineer. In this capacity, the appellant/writ petitioner was transferred to Nazira in the District of Sibsagar, Assam in the year 1988. In the month of June, 1993 the appellant was deputed to look after the ONGC Lakwa Maintenance Unit with effect from 24.6.1993. However, the appellant did not join to his new assignment at Lakwa and remained absent from the job. In the month of August, 1994 when the appellant returned from his native place in the State of U.P and expressed his willingness to resume the duty, he was told about his transfer to Silchar. Simultaneously, the appellant was also served the notice to vacate his official quarter at Nazira vide notice dated 27.8.1994. This notice was challenged in W.P(C )No .3410 of 1994.

4. When the appellant/writ petitioner did not get a favourable order, an appeal numbered as W.A. No.540 of 1994 was filed. During the pendency of that appeal, the appellant/writ petitioner was removed from the job vide order dated 30.1 .1995 issued under Memo. No.NZR/Estt/3(50)/94-95/1252-62 (Annexure-XX to the writ petition). This order has been upheld under the impugned judgment.

5. Shri G.N. Sahewella, learned Sr. counsel appearing for the appellant/writ petitioner confined his arguments to the application of ONGC Leave Regulations , 1968 in the present facts and circumstances. According to the learned Sr. counsel, the provisions of Regulation 14(5) can be invoked only if an employee fails to resume his duty on the expiry of extra-ordinary leave and not for any other alleged misconduct. Elaborating his submissions, the learned Sr. counsel submitted that the appellant/ writ petitioner neither asked nor he was granted any leave and as such no punitive action could be taken under the said Leave Regulations.

6. Per contra, the learned counsel for the respondents submitted that when an employee does not turn up for duty, it is to be presumed that he/she is on leave and on this basis the ONGC has rightly invoked the provisions of Leave Regulations.

7. For better appreciation of rival contentions as well as correctness of the impugned judgment, it would be apposite to look at Regulation 14(5) of the ONGC Leave Regulations, 1968 which runs as follows:

14. Extraordinary Leave:

xxx xxx xxx xxx

(5) Where an employee fails to resume duty on the expiry of the period of extraordinary leave if the leave granted to him is the maximum that can be granted under this regulation or where an employee who is granted a lesser amount of extraordinary leave than the maximum admissible under this regulation, remains absent from duty for any period which, together with extraordinary leave so granted exceeds the limit upto which he could have been granted leave under this regulation, he shall be deemed to have resigned his appointment and shall accordingly cease to be in the employment of the Commission, unless the Commission may determine otherwise, in view of the exceptional circumstances of the case.

8. It may be mentioned here that prior to removing the appellant/writ petitioner from the Rolls of the Corporation, the ONGC had issued certain notices to the appellant/writ petitioner for his unauthorized absence. At this stage itself, the ONGC had made up its mind that unauthorized absence shall be dealt with under Regulation 14(5) of the aforesaid Regulations. At the same time, we find from the notices dated 1.7.1993 and 14.12.1993 (Annexures-XIII and XIV to the affidavit-in-opposition filed in the writ petition) that simultaneously the ONGC also alleged that unauthorized absence amounted to misconduct in terms of Regulation 2(K) and Regulation 6 of ONGC CDA Regulation, 1976. In the subsequent notice dated 1.2.1994, the provisions of CDA Regulations, which deals with misconducts were omitted.

9. After going through the impugned judgment, we find that the learned Single Judge directed himself to examine the order of dismissal of the writ petitioner from service only on the basis of notice and memorandum/order of dismissal dated 30.1.1995. The learned Single Judge held that since the writ petitioner remained unauthorizedly absent for the period more than 90 days w.e.f. 28.9.1993, he was rightly deemed to have resigned from the job. It may be mentioned here that Regulation 14 deals with extra-ordinary leave and under this provision such extra-ordinary leave can be granted for a maximum period of 3(three) months.

10. In our considered opinion, had it been a case of over staying or remaining absent unauthorisedly beyond the maximum period of 3(three) months after obtaining leave simpliciter, the appellant/writ petitioner would have no case to challenge the order of dismissal dated 30.1.1995. However, we find from the record that it is not the case of either side that the appellant/writ petitioner either requested for extra-ordinary leave or any such leave was so granted. This aspect was not considered by the learned Single Judge. Similarly, the learned Single Judge failed to appreciate as to why the ONGC had initially invoked the provisions of CDA Regulations, 1976; but subsequently took the disciplinary action under leave regulations.

11. In our considered view, since the ONGC CDA Regulations deals with the question of misconduct, the appellant/writ petitioner ought to have been punished under the said Regulations. To say it differently that we hold that the application of Regulation 14(5) of ONGC Leave Regulations, 1968 was totally misconceived as the misconduct of the employee could have been adequately dealt with under 1976 Regulations.

12. For the foregoing reasons, with due respect we differ with the view taken by the learned Single Judge. We are constrained to set aside the judgment dated 20.9.2001 passed by the learned Single Judge in C.R.No.784 of 1996. However, liberty is granted to the ONGC, more particularly respondents 1,2 and 3, to initiate appropriate disciplinary proceeding under ONGC’s CDA Regulations, 1976. If the ONGC desires to initiate disciplinary proceeding, it should commence within a period of 3(three) months from the date of receipt of this judgment. The reinstatement of the appellant/writ petitioner in service will be subject to initiation and decision of disciplinary proceeding.

13. With the aforesaid directions, the Writ Appeal stands allowed.